IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI

BEFORE SHRI N.V. VASUDEVAN, J.M. AND SHRI RAJENDRA SINGH, A.M.

ITA No. : 3088/Mum/2011
Assessment Year : 2007-08

Kabra Extrusiontechnik Ltd. 31, shah Industrial Estate Veera Desai Road, Andheri (W) Mumbai-400 053. **PAN No.:AAACK 4289 L**	Vs.	Dy. Commissioner of Income tax , Range-8(2) Mumbai.
(Appellant)		(Respondent)

Appellant by : Shri Nikhil Rajan
Respondent by : Shri P.K.B. Menon

Date of hearing	:	16.5.2012
Date of Pronouncement	:	16.5.2012

O R D E R

PER RAJENDRA SINGH, AM:

This appeal by the assessee is directed against the order dated 31.12.2010 for the assessment year 2007-08. The assessee in this appeal has raised disputes on two grounds which relate to disallowance of expenses under section 14A and disallowance of depreciation.

2. The first dispute is regarding disallowance of expenses relating to exempt income. The AO noted that the assessee received dividend income of Rs.1,03,16,825/- and long term capital gain Rs.72,13,876/- on sale of shares which were exempt from tax. The assessee had however not disallowed any expenses relating to exempt income. The AO therefore, computed disallowances under Rule 8D amounting to Rs.1,38,485/- relating to interest expenditure and Rs.1,21,154/- relating to other expenses totaling to Rs.2,59,639/-. In appeal CIT(A) observed that Rule 8D was applicable from assessment year 2008-09 in view of the judgment of Hon'ble High Court of Bombay in the case of Godrej and Boyce Mfg. Co. vs. DCIT (328 ITR 81) in which it was held that in relation to prior years, disallowances should be made on reasonable basis. CIT(A) held that it would be reasonable to disallow expenses @ .5% of average value of investment on the first day and last day of the year amounting to Rs.1,21,154/-. Aggrieved by the said decision assessee is in appeal before the Tribunal.

3. We have perused the records and considered the matter carefully. The dispute is regarding disallowance of expenses relating to exempt income under section 14A of the IT Act. Under the provisions of Section 14(2) and 14(3), expenses relating to exempt income are required to be computed as per method prescribed by the Government. The Government has since notified the method in the

form of Rule 8D w.e.f. 1.4.2008. The Hon'ble Bombay High Court in the case of Godrej and Boyce Mfg. Co. vs. DCIT (328 ITR 81) have held that Rule 8D is applicable only from assessment year 2008-09 and in respect of prior years, disallowance has to be made on a reasonable basis, of both direct and indirect expenses after allowing opportunity of hearing to the assessee. The AO had disallowed the interest and other expenses as per Rule 8D, which is not applicable. CIT(A) has held that it will be reasonable to take expenses @ 05% of average value of investments. He has not given any basis for the same. The AO had not gone into the reasonableness of the expenses as he applied Rule 8D. In our view, the reasonableness of expenses requires fresh examination at the level of AO. We, therefore, set aside the order of CIT(A) and restore the matter to the file of AO for passing a fresh order after necessary examination and after allowing opportunity of hearing to the assessee.

4. The second dispute is regarding disallowance of depreciation. The AO noted that the assessee had claimed depreciation on fixed assets at Rs.5,85,90,847/- which included a sum of Rs.4,92,26,745/- on the assets of Division-III . The AO also noted that the assessee had not claimed depreciation on the assets of Division-III for the first 5 years and depreciation was claimed for the first time in assessment year 2000-01. The AO however had allowed depreciation in the earlier

years. The assessee however ignored depreciation allowed in earlier years and computed WDV ignoring depreciation thrust by AO in the earlier years. The assessee had claimed depreciation on the assets of Division-III at Rs.4,92,26,745/- when the depreciation actually allowable after considering the depreciation allowed by AO in earlier years came to Rs.4,73,61,561/-. The AO therefore disallowed excess depreciation claimed of Rs.18,65,184/-. In appeal CIT(A) noted that stand of the assessee to exercise option to not claim depreciation in the assessment year 1995-96 to 1999-00 had not been upheld by the by the Hon'ble High Court of Bombay in which it was held that charge of depreciation was mandatory. CIT(A) therefore, confirmed the disallowance made by AO aggrieved by which assessee is in appeal.

5. Having heard both the parties, we find that the same issue had come up before the Tribunal in assessee's own case in assessment year 2006-07 in which the Tribunal in the order dated 21.10.11 in ITA No.4236/M/2010 noted that the Tribunal in assessee's own case in assessment year 2001-02 and assessment year 2004-05 following the judgment of Hon'ble High Court of Bombay in the case of Scoop Industries P. Ltd. vs. ITO (298 ITR 195) directed the AO to compute the WDV by taking into account the actual cost of the assets and increasing the same by the additions made to it and then reduce depreciation actually claimed and allowed in earlier years. The Tribunal

therefore, directed the AO to adjudicate the issue afresh in the light of direction of the Tribunal in earlier years. Facts in this case are identical. Therefore, respectfully following the decision of the Tribunal in earlier years (supra), we direct the AO to re-compute the depreciation in the light of the decision in earlier years.

6. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 16.5.2012.

Sd/-	**Sd/-**
(N.V. VASUDEVAN)	**(RAJENDRA SINGH)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 16.5.2012.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.